



**FOLEY
HOAG LLP**
ATTORNEYS AT LAW

January 23, 2004

Mary Beth Gentleman
Boston Office
617-832-1199
mgentleman@foleyhoag.com

By Hand

Ms. Mary L. Cottrell
Secretary
Department of Telecommunications & Energy
One South Station
Boston, MA 02110

Re: D.T.E. 03-83
Petition of USGen New England, Inc.

Dear Ms. Cottrell:

On behalf of USGen New England, Inc. ("USGenNE"), I enclose for filing in the above-referenced docket one original and one copy of USGenNE's Supplemental Response 1 to Information Request NEP-1-1 of the First Set of Information Requests of New England Power Company.

Kindly date stamp the enclosed copy of this letter, and return same to our messenger.

Thank you for your attention to this matter.

Sincerely,


Mary Beth Gentleman

MBG:jrd
Enclosures

cc: Selma Urman, Hearing Officer (1 copy)
Diedre Matthews, Director, Siting Division (1 copy)
William Febiger, Technical Director, Siting Division (1 copy)
Jolette Westbrook, General Counsel, Siting Board (1 copy)
Amy Barad, Analyst, Siting Division (1 copy)
Louis M. Arak, Project Manager (1 copy)
Service List

15/118090.1

USGen New England, Inc.
Salem Harbor Station
DTE 03-83
Information Request NEP-1-1
(Supplemental Response 1)
Person Responsible: Lou Arak
Date: January 23, 2004

NEP-1-1: Please explain why USGenNE is seeking to defer the Department's consideration of an exemption from Section 7-18 of the City of Salem Ordinances (Site Plan Review by the Planning Board), notwithstanding the potential for project delay if an appeal of the associated building permit is brought.

Response: On January 13, 2004, the Department granted USGenNE's motion to defer the Department's consideration of an exemption from Section 7-18 of the City of Salem Ordinances. No appeal of the Site Plan Approval was filed within the statutory appeal period. A copy of the Site Plan Approval as stamped by the City Clerk at page 7 confirming that no appeal has been filed is included as Attachment NEP-1-1 (Supp. 1-1). Any appeal of the associated building permit would not be filed until after the issuance of the building permit.



CITY OF SALEM PLANNING BOARD

CITY OF SALEM, MA.
CLERK'S OFFICE

2003 DEC 23 P 1:35

Site Plan Review Decision

December 18, 2003

USGen New England, Inc.
C/o Serafini, Serafini, Darling & Correnti, LLP
Attorneys at Law
63 Federal Street
Salem, MA 01970

RE: USGen New England, Inc., 24 Fort Avenue
Site Plan Review Decision

The site, Salem Harbor Station, is a 745-megawatt electric generating facility located on a 65-acre waterfront site. The facility has been operating in Salem since 1951 and employs more than 170 people. It is the largest single taxpayer in the City. The proposed project is designed to meet the new Massachusetts Department of Environmental Protection Air Emission Regulations. To this end, the Applicant entered into an Administrative Consent Order ("ACO") in June, 2003 with the City of Salem, Commonwealth of Massachusetts, and other parties, agreeing to near-term and long-term compliance measures and a corresponding compliance schedule. One requirement of the ACO was the filing of this application with the Salem Planning Board by September 1, 2003, a milestone which was met with an August 28, 2003 filing. Additionally, the Applicant has filed a Petition for Zoning Exemption pursuant to G.L. c. 40A, §3, with the Department of Telecommunications and Energy ("DTE") for zoning relief necessary for the Project to be constructed. That Petition is currently pending.

On Thursday, September 18, 2003, the Planning Board of the City of Salem opened a Public Hearing regarding the application of USGen New England, Inc. under Section 7-18 Site Plan Review of the City of Salem Zoning Ordinance for the property located at 24 Fort Avenue. The project involves the construction and use of an Emission Control Plan consisting of various equipment and structures at Salem Harbor Station (the "Facility"). The Facility is located on approximately 65 acres, and includes three primarily coal-fired boilers and one oil-fired boiler, with a total nominal generating capacity of approximately 755 MW.

The public hearing was continued to October 2, 2003; October 16, 2003; November 6, 2003; November 20, 2003; December 4, 2003 and December 18, 2003. The Public Hearing was closed on December 18, 2003. At a regularly scheduled meeting of the Planning Board held on December 18, 2003, the Board voted by a vote of nine (9) in favor (Power, Puleo, Weiner, Lombardini, Sullivan, DiGeronimo, Durand, Moustakis, Collins), none (0) opposed, to approve the application as complying with the requirements of Site Plan Review subject to the following conditions:

- 1. Conformance with the Plan**
Work shall conform with the plans entitled, "Site Plan Submittal Drawings, Emission Control Project, Salem Harbor Station, Salem, MA." Including sheets SPS 1000-1028, prepared by Sargent & Lundy, LLC., 55 East Monroe Street, Chicago, IL, 60603-5780 and dated August 25, 2003 and revised November 4, 2003, November 17, 2003, and December 3, 2003. In addition, the application, Construction Traffic Management Plan, and Environmental Impact Statement submitted and presented to the Planning Board shall be incorporated in this decision.
- 2. Applicant**
USGen New England, Inc. is the applicant for this Site Plan Review decision. All conditions contained within this decision will be applicable to the applicant, its successors, or assigns.
- 3. Amendments**
Any amendments to the site plan shall be reviewed by the City Planner and if deemed necessary by the City Planner, shall be brought to the Planning Board. Any waiver of conditions contained within shall require the approval of the Planning Board.
- 4. Landscaping**
Any proposed landscaping shall be done in accordance with the approved set of plans.
- 5. Signage**
Any proposed signage shall be reviewed and approved by the City Planner.
- 6. Lighting**
 - a. A final lighting plan (showing street lighting and building lighting) shall be submitted to the City Planner for review and approval prior to the issuance of a building permit.
 - b. No light shall cast a glare onto adjacent parcels or adjacent rights of way.
- 7. Conservation Commission**
All work shall comply with all relevant Orders of Conditions issued by the Salem Conservation Commission.
- 8. Construction Practices**
All construction shall be carried out in accordance with the following conditions:

- a. The operation of tools or equipment used in construction or demolition work shall occur in accordance with Salem Ordinance Section 22-2 (5): Construction and Blasting and between the hours of 8:00 AM and 5:00 PM on weekdays and Saturdays. No work shall take place on Sundays or holidays. The Planning Board will agree to changes in the starting time, at the request of the applicant and if approved by a formal vote of the City Council, as per the ordinance.
 - b. Any blasting, rock crushing, jack hammering, hydraulic blasting, or pile driving shall occur in accordance with Salem Ordinance Section 22-2 (5): Construction and Blasting and be limited to Monday-Friday between the hours of 8:00 AM and 5:00 PM. There shall be no blasting, rock crushing, jack hammering, hydraulic blasting, or pile driving on Saturdays, Sundays, or holidays.
 - c. Blasting shall be undertaken in accordance with all local and state regulations.
 - d. All reasonable action shall be taken to minimize the negative effects of construction on abutters. Any noise generated during construction shall be in accordance with the Environmental Impact Statement submitted and presented to the Planning Board.
 - e. All construction vehicles and equipment shall be cleaned prior to leaving the site so that they do not leave dirt and/or debris on surrounding roadways as they exit the site.
 - f. The applicant shall abide by any and all applicable rules, regulations and ordinances of the City of Salem.
 - g. All construction vehicles and equipment left overnight at the site must be located completely on the site.
 - h. If the applicant proposes to deviate from any proposed construction practices, a revised plan must be submitted describing the construction practices and highlighting any methods that are different than those presented to the Planning Board during the public hearing to the City Planner for review and approval. The revised plan shall be submitted no less than 30 days prior to the start of construction.
- 9. Notice of Construction Commencement**
 Advance notice shall be provided to all abutters within 300 feet of the site in writing at least 72 hours prior to commencement of construction of the project. The applicant shall provide a copy of the notification to the City Planner for review and approval prior to its release.
- 10. Construction Traffic**
- a. Following the selection of the construction vendors, the applicant will discuss with the Department of Planning and Community Development possible mitigation to those intersections and roadways affected by the construction traffic. The applicant expressly agrees to provide additional police details and any other such reasonable mitigation, as directed by the City, acting through its City Planner.

- b. All work shall be undertaken in accordance with the Construction Traffic Management Plan dated September 30, 2003 and presented to the Planning Board, which includes the number of construction vehicles, duration of each construction phase, and proposed construction vehicle routes. Any amendments proposed to be made to the plan must be approved by the Department of Planning and Community Development prior to implementation.
- c. The applicant shall provide a police detail, at their cost, at the intersection of Derby Street/Webb Street during all phases of construction. In addition, the Department of Planning and Community Development shall require additional police details at that and other locations during the course of the construction project if determined necessary by the City Planner.

If during construction, the applicant believes that a police detail will not be necessary at the intersection of Derby Street/Webb Street due to a significant decrease in the level of construction traffic in an upcoming 30 day period, the applicant may make a request to the Department of Planning and Community Development that the required police detail be suspended at that intersection for that 30 day period. Such request shall be made in writing to the City Planner at least two (2) weeks prior to the requested time period, shall specify the reason for such request, and shall be reviewed by the City Planner in a timely manner. The Department of Planning and Community Development will not consider any such request during the following high traffic phases of construction: the fill operation during site preparation; the concrete pour during site construction; periods of delivery of large equipment by land; or when the number of daily construction workers exceeds seventy-five (75).

- d. No street shall be closed without prior approval of the Department of Planning and Community Development, unless deemed an emergency by the Salem Police Department.
- e. Construction traffic must follow the truck route as described in the Construction Traffic Management Plan submitted and presented to the Planning Board. Furthermore, under no circumstances shall any trucks be permitted on any portion of New Derby Street or Derby Street from Lafayette Street to its intersection with Webb Street.
- f. All construction vehicles, truck and employees, shall be located completely on site. No vehicles shall be parked off site at any time for the duration of the construction project.
- g. The applicant shall clean and sweep all streets affected by their construction truck traffic as necessary. If the City Planner determines that additional sweeping is necessary, the applicant will sweep those streets required by the City Planner.

11. Neighborhood Needs

- a. The applicant shall provide snow emergency parking on a designated lot within the facility site via the India Street gate for the surrounding neighborhood during the construction of the project. A plan depicting the designated lot shall be submitted to the

Department of Planning and Community Development prior to the start of construction.

- b. After the construction project has been completed, the applicant shall discuss the potential for implementation of any future neighborhood parking/public needs on the site with the Department of Planning and Community Development.

12. Impact Fees

Upon completion of all permitting, including obtaining all necessary building permits, and upon the mobilization of the contractor on the site for commencement of the Project work (the "Commencement Date"), the Applicant shall pay to the City of Salem the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). Three additional annual payments of \$250,000.00 each shall be paid by the Applicant to the City of Salem on the first, second and third anniversaries of the Commencement Date, for a total payment by the Applicant to the City of One Million Dollars (\$1,000,000.00). These fees shall be used by the City to help mitigate the impact of the Project, as well as to offset the expenses incurred by the City as a result of the Project. Once commenced, should the Project work be terminated or cancelled without the Project being substantially completed, then the outstanding obligations of this paragraph, if any, shall also be terminated, and no further payments shall be due.

13. Removal of Non-Functional "capped" Stacks

Three (3) non-functional "capped" stacks currently exist on the site. In an effort to enhance the aesthetics of the facility and its visual impact on the city, the Planning Board supports the applicant's removal of these three stacks, either in their entirety or down to the roof-line of the adjacent structure, whichever proves more feasible. Therefore, the applicant shall submit a report to the Department of Planning and Community Development describing the feasibility of removing or lowering these stacks, which shall include an analysis of demolition/removal method(s) that could be used and proposed actions for addressing the Board's concerns.

14. Barge Use

As proposed by the applicant in the Construction Traffic Management Plan and presented to the Planning Board, large equipment and ductwork shall be brought by barge to the construction site. In addition, the applicant shall notify the Salem Harbor Master a minimum of one week prior to the arrival of any barge associated with the construction

15. Paving

The applicant shall re-pave lower Webb Street and the intersection of Webb Street/Derby Street from curb to curb after construction is complete.

16. Pile Driving

The applicant shall only drill piles as presented to the Planning Board and described in the memorandum titled "Analysis of Alternative Pile Placement Noise" and dated December 16, 2003. This method shall be used in order to mitigate noise impacts to the neighboring school. If the drilling methods as described in the memorandum are not used in the construction project, except for the driving of sheet piles for the crane support, the applicant shall present either an alternate method for noise reduction, an alternative construction

method or schedule, or a proposal to mitigate the impact of noise on the adjacent school to the Department of Planning and Development for review and approval.

17. Noise

Noise during operation of the project will be in conformance with the Environmental Impact Statement submitted and presented to the Planning Board.

18. Clerk of the Works

A Clerk of the Works shall be provided by the City, at the applicant's expense, as is deemed necessary by the City Planner. The Clerk of the Works shall have the authority at the site to enforce any condition of this decision on behalf of the City.

19. Health Department

All work shall comply with the requirements of the Salem Health Department, if applicable.

20. Office of the City Engineer

All work shall comply with all requirements of the office of the City Engineer.

21. Fire Department

All work shall comply with the requirements of the Salem Fire Department.

22. Office of the Building Commissioner

All work shall comply with the requirements of the office of the Building Commissioner.

23. Utilities

An existing Utilities Plan and Utility Installation Plan shall be reviewed and approved by the Department of Public Services prior to the issuance of a Building Permit.

24. Maintenance

- a. Refuse removal, ground maintenance and snow removal shall be the responsibility of the developer, his successors or assigns.
- b. Winter snow in excess of snow storage areas on the site shall be removed off site.
- c. Maintenance of any landscaping shall be the responsibility of the applicant, his successors or assigns. The applicant, his successors or assigns, shall guarantee all trees and shrubs installed at the site for a two- (2) year period.

24. As-built Plans

As-built plans, stamped by a Registered Professional Engineer, shall be submitted to the Department of Planning and Community Development and Department of Public Works prior to the issuance of the final Certificate of Occupancy.

25. Violations

Violations of any condition shall result in revocation of this permit by the Planning Board, unless the violation of such condition is waived by a majority vote of the Planning Board.

I hereby certify that a copy of this decision and plans has been filed with the City Clerk and copies are on file with the Planning Board. The Site Plan Review shall not take effect until a copy of this decision bearing the certification of the City Clerk that twenty (20) days have elapsed and no appeal has been filed or that if such appeal has been filed, and it has been dismissed or denied, is recorded in the Essex South Registry of Deeds and is indexed under the name of the owner of record is recorded on the owner's Certificate of Title. The owner or applicant, his successors or assigns, shall pay the fee for recording or registering.

Walter B Power
Walter B Power, III
Chairman

Date JAN 13 2004

I hereby certify that 20 days have expired from the date this instrument was received, and that NO APPEAL has been filed in this office.

A True Copy
ATTEST

Deborah C. Burkinshaw
CITY CLERK

